THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff, v. BERNARD ROSS HANSEN, Defendant.	No. CR18-092-RAJ REPLY TO GOVERNMENT RESPONSE TO DEFENSE MOTION TO STRIKE SURPLUSAGE

The defendant, Bernard Ross Hansen, moved to strike surplusage from the Indictment that was irrelevant, immaterial and/or prejudicial. Dkt. 96. In its response, the government first contends that the motion is "moot" because "the practice in this district that indictments are not provided to trial juries." Dkt. 110 at 2 (citing to a district court decision from Idaho). However, there are no cases espousing the government's position that there can be no such thing as surplusage in this district. To the contrary, research reveals that this Court granted a motion to strike surplusage in *United States v. Powell*, 2016 WL 524251 (W.D. Wash. 2/10/2016). Although the government conceded the challenged language should be stricken in *Powell*, Fed. R. Crim. P. 7(c)(1), and indictment should be "plain" and "concise," with only the "essential facts constituting the offense charged," Fed. R. Crim. P. 7(c)(1), despite the district "practice."

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Next the government contends the identified passages are directly relevant to the charges. Dkt. 110 at 2. First, the defense respectfully disagrees with the government that the introductory paragraph in the preamble, or the language or information contained in paragraphs 13 through 16, 23, 26 through 27, 34 through 35, and 43 through 44 are "essential facts constituting the offense charged." Second, in *United States v. Struckman*, 2007 WL 9701146 (W.D. Wash. April 2, 2007), the case cited by the government, Dkt. 110 at 2, affirms that language in an indictment that suggests others crimes were committed should be stricken. The defendant in *Struckman* was charged with conspiracy to defraud. One of the sentences at issue in *Struckman* was the phrase "[a]t the Global Prosperity seminars, vendors promoted, among other things, bogus trust packages and other anti-tax schemes advocating fraudulent methods of eliminating one's income taxes" *Id.* In striking the term "bogus" or the phrase as surplusage, the court noted the descriptive language had no relevance to the defendant's intent to conceal his own income as charged.

Here, the allegations are that Mr. Hansen and Ms. Erdmann used the mail or wire communications to obtain money or property from the Northwest Territorial Mint customers by statements meant to influence that person and with intent to defraud. Ninth Circuit Instr. 8.121 (mail fraud); Ninth Circuit Instr. 8.124. Materiality of false statements or promises must be established. *United States v. Carpenter*, 95 F.3d 773, 776 (9th Cir. 1996). But the terms "wrongly" in paragraphs 13-15 and 26 suggest that those specific acts were illegal, separate from the alleged fraud, and therefore should be stricken. Dkt. 96 at 2-3.

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For the reasons stated herein, as well as those set forth in the original motion, the 20-page indictment contains irrelevant, immaterial and/or prejudicial information that should be stricken.

DATED this 23rd day of August, 2019.

Respectfully submitted,

s/ *Dennis Carroll*
s/ Andrew Kennedy
s/ *Jennifer E. Wellman*
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Attorneys for Bernard Ross Hansen

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CERTIFICATE OF SERVICE

I certify that on August 23, 2019, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of filing to all registered parties.

s/ *Alma R Coria*
Paralegal

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